

COMMUNITY AFFAIRS

Division Of Codes And Standards Hotels and Multiple Dwellings Child-Protection Window Guards

Proposed Amendments: N.J.A.C. 5:10-27.1 and 27.4

Proposed New Rules: N.J.A.C. 5:10-27.3 and Appendices 27A and 27B

Authorized by: Susan Bass Levin Commissioner, Department of Community Affairs

Authority: N.J.S.A. 55:13A-7.16

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2006-

Submit written comments by November 1, 2006 to:

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SUSAN BASS LEVIN, Commissioner

The agency proposal follows:

Summary

On July 31, 2006, Governor Jon S. Corzine signed P.L. 2006, c.55, which amended P.L. 1995, c.120, N.J.S.A. 55:13A-7.12 et seq. This amendatory law is designed to strengthen the protections afforded to children of tenants residing in multiple dwellings by enhancing the provisions of law concerning child-protection window guards.

The prior child-protection window guard law was adopted in 1995 in response to the tragic death of Robert E. Dwight, Jr. Although that law requires landlords to install child-protection window guards upon the written request of a tenant, incidents of children falling out of windows continued to occur. Most recently, this past August 2005, five-year old Zahir Atkins fell to his death from a 15th-floor window, despite the presence of a window guard. In 2003, two-year old Raquan Ellis died after plunging from a 17th-floor window, also despite the presence of a window guard. In both instances, the windows opened wider than four inches above the top of the window guard allowing the

children to climb out. P.L. 2006, c.55 named the State's child-protection window guard law in memory of these three children.

Under prior rules, rigid metal stops in the upper tracks of a bottom window could be used in order to prevent the bottom window from being raised more than four inches above the window guard. However, there were many cases where tampering with these stops occurred, most likely to increase air ventilation during the heat of the summer. As a result, some bottom windows were raised more than four inches above the top of the window guard, thus defeating the purpose of the window guards. In 2005, the Department adopted amended rules to prohibit this practice. Those rules included specifications for double hung windows to ensure that window guards protect the full openable area of each lower window. The specifications, which are expressly required by P.L. 2006, c.55, provide that all window guards must be designed and installed so that the space between the lowest section of the top horizontal bar of the window guard and the bottom of the upper window sash is less than four inches.

Additionally, the prior law did not afford tenants renting from owners of units in common interest communities, such as condominiums and cooperatives, the power to request the installation of window guards by their landlord. P.L. 2006, c.55 has extended the protections of child-protection window guards to tenants residing in these types of housing, requiring the owner of a rental unit in such housing to be deemed the landlord and the responsible party for installation. The unit owners' association will be responsible, however, to install window guards on windows in common areas of the community property which are maintained by the association. Some unit owners' associations, which manage the common areas of common interest communities, have rules, which prohibit the installation of child-protection window guards on esthetic grounds. The new law prohibits unit owners' associations from enforcing such rules.

P.L. 2006, c.55 extends the ability to request window guards to tenants of rental units in which a child under 10 years of age is regularly present for a substantial period of time. The prior law only authorized tenants to request window guards if the child resides in the unit. P.L. 2006, c.55 thus validates language added to the rules in 2005 that gave that right to tenants of units in which a child is regularly present for a substantial period of time.

P.L. 2006, c.55 requires owners to provide tenants with orientations on the safe use and manipulation of window guards, upon installation and annually thereafter. The proposed rules, at Appendix 27B, provide a *Tenant's Guide* to be used in such orientations. The statute also requires owners to inspect window guards under their control at least two times a year and to maintain an inspection log as a permanent record, which would be made available to the department upon request. The proposed rules would implement the statute by establishing specific requirements for the inspection and log.

The proposed rules would also implement provisions of the statute that enhance the procedures for notifying tenants of their rights by (1) requiring all multiple dwelling leases to contain a notice in boldface type, (2) requiring owners of multiple dwelling units to verbally inform tenants of their rights under this law at lease signing which would be evidenced by a written document separate from the lease itself, (3) requiring

owners of multiple dwelling units and those in control of the common elements to provide, twice annually, notice of the right to request the installation of window guards in units and in common areas, and requiring a prominent posting of these rights in common areas of multiple dwellings.

Under authority of P.L. 2006, c. 55, the Department is proposing rules setting forth circumstances under which a tenant could request the installation of child-protection window guards on a first floor window. Under this proposal, window guards would have to be installed at the tenant's request in first floor windows where the bottom of the window is more than six feet above grade or there is any other hazardous condition.. The new law also makes it clear that the window guard requirement does not apply in cases where the window is not designed to be opened or to seasonal rental units. These provisions are incorporated into the proposed rules.

In accordance with P.L. 2006, c.55, the proposed rules would establish guidelines for window-guard orientation programs and would ensure that orientation programs are run annually in every multiple dwelling of at least four stories in height which contains publicly-subsidized housing or house any tenants receiving State or Federal rental assistance.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a) 5.

Social Impact

The proposed amendments would be socially beneficial in that they would implement enhanced statutory protections for children living in multiple dwellings.

Economic Impact

The proposed rules would not impose any economic obligation not already imposed by statute.

Federal Standards Statement

No Federal standards analysis is required because these rules are not being proposed for amendment under the authority of, or in order to implement, comply with, or participate in, any program established under, Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Jobs Impact

The Department does not expect that adoption of this rule proposal would result in the creation or loss of any jobs.

Agricultural Industry Impact

This proposal would have no impact upon the agricultural industry.

Regulatory Flexibility Statement

The proposed amendments would apply to all multiple dwellings of more than one story, including those owned by "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. They would not impose any

reporting, record keeping or compliance obligations not already imposed by statute on any such “small businesses.”

Smart Growth Impact

The adoption of this proposal would not have any impact upon the achievement of “smart growth” or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in bold face thus; deletions indicated in brackets [thus]).

5:10-27.1 Child-Protection Window Guards; When Required

(a) (No change.)

(b) The requirements of this subchapter shall not apply to any window which either gives access to a fire escape or is **not designed to open or, except as otherwise provided in 1. below, which is** on the first floor, or to any unit that is owner-occupied [, is part of a condominium or is held by a proprietary lessee under a cooperative form of ownership or occupied by a shareholder in a mutual housing corporation]. **The requirements of this subchapter shall be inapplicable to seasonal rental units.**

1. [For purposes] **The requirements** of this subchapter [, a] **shall apply to any** window in a room or hallway [shall not be considered to be] on the first floor if the [finished surface of the floor of that room or hallway] **sill of such window** is more than six feet above grade as measured at the location of the window **or if there is any other hazardous condition at that location that would necessitate installation of a window guard.**

(c) All leases offered to tenants in multiple dwellings [, other than multiple dwellings under a condominium, cooperative or mutual housing form of ownership,] shall contain a clear, legible and conspicuous notice, **in prominent boldface type,** advising tenants and prospective tenants that the owner is required by law to provide, install and maintain window guards in the apartment of any tenant who has a child or children 10 years of age or younger living in the apartment or regularly present there for a substantial period of time and makes a written request to the owner or the owner's representative that the window guards be installed, and that the owner is also required, upon the written request of any such tenant, to provide, install and maintain window guards in the building hallways to which persons in the tenant's unit have access without having to go out of the building. A lease offered to a tenant of a first floor unit shall [not be required to refer to] **state that** window guards **are not required to be installed** in the apartment **or in hallways on the first floor unless the sill of any window in the unit is more than six feet above grade at the location of the window or there is any other hazardous condition at that location necessitating installation of a window guard** [, but only to window guards in the hallways above the first floor to which persons in the tenant's unit have access without having to go out of the building]. **A model lease and notice provision containing the required information is set forth at Appendix 27A of this subchapter.**

1. At the time of lease signing, the owner, or the agent of the owner, shall verbally inform the tenant of the tenant's right to request installation of window guards under this subchapter. Verification that this verbal notice was provided

and understood shall be set forth in a written document separate from the lease that shall be signed by the tenant and by the owner or agent and shall be made available by the owner upon request of any representative of the bureau.

(d) At least [once] **twice** in each calendar year, the owner or other person who manages or controls a multiple dwelling [, other than a multiple dwelling exempted by (c) above,] shall deliver to each tenant a clear and legible notice containing the information required by (c) above. This notice shall be hand-delivered to the tenant or sent to the tenant, at the unit, by ordinary or certified mail. However, [no] **only one** additional notice shall be required in any year in which a tenant receives a copy of a lease or a lease renewal that is in conformity with (c) above. A notice given to a tenant of a first floor unit shall [not be required to refer to] **shall state that window guards are not required to be installed in the apartment or in hallways on the first floor unless the sill of any window in the apartment or hallway is more than six feet above grade at the window or there is any other hazardous condition at that location necessitating installation of window guards** [, but only in the hallways above the first floor to which persons in the tenant's unit have access without having to go out of the building]. **The model lease and notice provision set forth in Appendix 27A of this subchapter may be used to satisfy the biannual notice requirements. The owner shall maintain records of compliance with this subsection that shall be made available by the owner upon request to any representative of the bureau.**

(e) [Within two weeks following receipt of notice from the Bureau, and thereafter at least once annually] **Semi-annually**, between March 15 and May 1 [beginning in 2006] **and between September 1 and December 1**, the owner, or other person responsible for the management or control, of a multiple dwelling in which child-protection window guards have been installed by the owner, shall inspect each such window guard to ensure that it remains sound and in conformance with the provisions of this subchapter, and shall enter a record of such inspection in a log, which shall be maintained as a permanent record so long as the window guard remains installed, and for five years thereafter, and which shall be available upon request to the Bureau or its duly-authorized representative. **The log shall indicate the date of inspection, the unit(s) inspected, the results of the inspection and the name and title of the person performing the inspection, who shall sign the log.**

(f) The owner shall cause to be conspicuously posted and prominently displayed in the common areas a notice advising tenants of the obligation of the owner to install window guards and advising tenants to check their window guards on a regular basis and report any problems to the owner or agent of the owner.

(g) In January or February of each year, the owner of each multiple dwelling that is (i) over three stories in height and (ii) built with public funds or assistance, or financed in whole or in part by a loan guaranteed or insured by the Federal government or any agency thereof, or allocated any low income tax credits, or have any residents who are recipients of State or Federal rental assistance, shall offer a window guard orientation program to educate tenants about the safe use and manipulation of window guards and their rights with regard to the installation of window guards. All such orientation programs shall include distribution and reading aloud of the brochure promulgated as Appendix 27B of this subchapter. A record indicating the date, time and place at which the orientation program was offered, copies of all written information presented and the names of all presenters and attendees, shall be maintained by the owner and be available for inspection by

any representative of the bureau. Notice of the orientation program shall be posted in appropriate common areas of the building at least two weeks prior to the date of the program.

5:10-27.3 Common interest communities

(a) For purposes of this subchapter:

1. “Common interest community” means a horizontal property regime, condominium, cooperative or mutual housing corporation, in which some of the property, known as “common elements,” is owned by all of the unit owners as tenants-in-common.

2. “Unit owners’ association” means the association organized for the purpose of management of the common elements and facilities of a common interest community.

(b) In a common interest community, the owner or proprietary leaseholder of each unit in which one or more children 10 years or under reside or will reside or are regularly present for a substantial period of time shall have the duties of an owner under this subchapter with regard to the unit. The unit owners’ association shall have the duties of an owner under this subchapter with regard to the common elements and facilities.

(c) The owner or proprietary lessee of a unit in a common interest community shall provide written notice to the unit owners’ association of any request by the tenant of a unit in which one or more children 10 years of age or under reside or will reside or are regularly present for a substantial period of time for installation of window guards on windows in the common elements.

(d) A unit owners’ association shall not adopt or seek to enforce any restrictions or architectural controls that would prohibit or impede the installation of window guards required to be installed by this subchapter.

5:10-27.4 Specifications for window guards

(a)-(d) (No change.)

(e) Window guards shall protect the full openable area of each lower window.

1. (No change.)

2. Installation of rigid metal stops in the upper tracks of a lower window, or other attempts to limit the ability to raise the lower window, shall not be an acceptable method of satisfying the requirements of this section.

APPENDIX 27A: MODEL LEASE AND NOTICE PROVISION

The owner (landlord) is required by law to provide, install and maintain window guards in the apartment if a child or children 10 years of age or younger is, or will be, living in the apartment or is, or will be, regularly present there for a substantial period of time if the tenant gives the owner (landlord) a written request that the window guards be installed. The owner (landlord) is also required, upon the written request of the tenant, to provide, install and maintain window guards in the hallways to which persons in the tenant's unit have access without having to go out of the building. If the building is a condominium, cooperative or mutual housing building, the owner (landlord) of the apartment is responsible for installing and maintaining window guards in the apartment and the association is responsible for installing and maintaining window guards in hallway windows. Window guards are only required to be provided in first floor windows where the windowsill is more

than six feet above grade or there are other hazardous conditions that make installation of window guards necessary to protect the safety of children.

APPENDIX 27B: TENANT'S GUIDE TO WINDOW GUARD SAFETY

What are window guards and why are they used?

Window guards are metal grilles that are installed in windows in order to keep young children from climbing out and being killed or injured. Young children may not understand the danger of an open window and may fall to their death at a moment when no older person is watching them.

When does a landlord have to install window guards?

A landlord must install window guards when asked to do so, in writing, by a tenant who has a child 10 years of age or younger either living in the apartment or regularly spending a lot of time there. Window guards only have to be installed in a first floor window when the bottom of the window is more than six feet above the grade outside the window or there is some other dangerous condition. Window guards are not required on windows that serve as fire exits or that are not designed to be opened. In a condominium, cooperative or mutual housing building, the association must install window guards in hallway windows when asked to do so in writing by a tenant who has a child 10 years of age or younger either living in the tenant's apartment or regularly spending a lot of time there and who has access to the hallway from the apartment without going outside.

What if the window already has window stops?

Window stops cannot be used as window guards. Window guards must be installed that protect the entire openable area of the lower window. Window stops can prevent windows from being opened enough to allow circulation of fresh air. Window stops must be removed if they obstruct full opening of the lower window. There have been tragic cases where tenants have removed window stops in order to have enough fresh air, windows have been left unprotected and children have fallen from them.

What should a tenant do if there is a problem with a window guard or if the owner will not provide and install a window guard?

If there is a problem with a window guard, the tenant should notify in writing the owner of the building or of the apartment or the person who is in charge of maintenance. A tenant should never remove or tamper with a window guard. A tenant should regularly check window guards to make sure that they have not become loose or damaged in any way. If there is a problem that the landlord or maintenance person fails or refuses to fix within a reasonable time after being told about it, the tenant can contact the municipal housing or building department or the Bureau of Housing Inspection of the New Jersey Department of Community Affairs (609-633-6210). The tenant should contact the Bureau of Housing Inspection if the owner fails or refuses to provide and install a window guard after receiving a written request from the tenant.

How much can a tenant be required to pay for installation of a window guard?

By law, the owner of an apartment can charge a tenant no more than twenty dollars (\$20.00) for each window guard installed in the tenant's apartment.

How can a tenant get window guards removed?

The owner of an apartment must remove a window guard when requested to do so by the tenant in writing. The tenant should be sure that window guards are

no longer needed before asking that they be removed. Window guards should not be removed by tenants.

Who is responsible for providing and maintaining window guards in a building that is a condominium, a cooperative or mutual housing?

In a condominium, cooperative or mutual housing multiple dwelling, the owner of the apartment is responsible for providing and maintaining window guards in the apartment. The association is responsible for providing and maintaining window guards on windows in the hallways. A tenant who wants to have window guards installed both in the apartment and in the hallways must make written requests both to the apartment owner and to the association.

Who can answer additional questions about the window guard law and rules?

Any tenant or owner who has questions about the law and rules concerning window guards can call the Bureau of Housing Inspection of the New Jersey Department of Community Affairs (609-633-6210).